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AZ CORP COMMISSION
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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE APPLICATION
OF UTILITY SOURCE, LLC, AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN
ITS WATER AND WASTEWATER RATES
AND CHARGES FOR UTILITY SERVICE
BASED THEREON.

DOCKET NO: WS-04235A-13-0331

**RESPONSE TO RUCO'S
APPLICATION
TO INTERVENE**

Utility Source, L.L.C. ("Company" or "Utility Source"), hereby files a response to the application to intervene by Residential Utility Consumer Office ("RUCO"). Utility Source moves the Court to deny RUCO's application because it is untimely and it is prejudicial.

I. RUCO'S APPLICATION IS UNTIMELY.

The procedural order dated March 17, 2014 expressly stated that all motions to intervene were due on or before June 6, 2014. *See id.* at p. 4. Here, RUCO did not file its application to intervene until July 7, 2014, a month after the intervention deadline had

1 passed. RUCO is a sophisticated state agency well aware of Commission practices and
2 procedures. As such, it should be required to follow the Commission's and this Court's
3 rules. Accordingly, RUCO's application to intervene should be denied.
4

5 **II. FACTORS CONSIDERED BY COURTS FAVOR DENYING** 6 **INTERVENTION.**

7 Notwithstanding the fact that RUCO is seeking intervention a month after the
8 Court set deadline passed, the analysis applied by civil courts also leads to the conclusion
9 that RUCO's application should be denied. As this Court knows, the administrative
10 courts often refer to the Arizona Rules of Civil Procedure (ARCP) for guidance. ARCP
11 permit intervention in an action only "[u]pon timely application." *See id.*, at Rule 24.
12 Timeliness depends upon several factors, including: (1) the stage of the lawsuit when
13 intervention is sought; (2) whether the applicant could have sought intervention earlier;
14 and most importantly, (3) whether intervention will be prejudicial to a party. *See State*
15 *Farm Mut. Ins. Co. v. Paynter*, 118 Ariz. 470, 471, 577 P.2d 1089, 1090 (App.1978);
16 *Winner Enters., Ltd. v. Superior Court*, 159 Ariz. 106, 109, 765 P.2d 116, 119
17 (App.1988). RUCO's application fails all three prongs of this test.
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22 **A. Late Stage of the Case.**

23 This case is in its final stages. Staff's testimony is due in one week. The
24 Company's rebuttal testimony is due twelve business days later. The hearing is set to
25 begin in thirty business days. It is too late to add new parties.
26

27 Ironically, in its Application, RUCO pointed out that it made this exact argument
28 to this Court just a few months ago. In the Chaparral City case (W-02113A-12-0118),

1 RUCO argued:

2 RUCO would object to granting of intervention. The filing deadline, as you
3 know, was November 1st. This is a sophisticated intervenor. It knows the
4 policies hear. Nothing personal here, but we are way past the deadline.

5
6 *See* Application, Ex. B, Transcript at p. 11, lines 9-13. RUCO's argument was sound
7 then and it is sound now. Consistent with its own position, RUCO should not be granted
8 intervention in this case at this late stage.

9
10 Now, arguing the exact opposite of what it asserted just a few months ago, RUCO
11 seems to imply that intervention should be freely given because a trade organization was
12 granted limited party status in the Chaparral City case. In that case, the intervening trade
13 association requested limited intervention to address two policy issues; it neither sought
14 to introduce witnesses nor change the procedural schedule. *See* RUCO's Application,
15 Ex. A; and Ex. B at Transcript p. 10 lines 10-16. In contrast, here RUCO seeks unlimited
16 party status, wants to offer witnesses, and asks to change the procedural order. The
17 Chaparral City case did not set the precedent for what RUCO now seeks; rather, it
18 demonstrates the impropriety of RUCO's Application and why it should be denied.
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21 **B. RUCO Could Have Intervened Earlier.**

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23 Here, the Company filed its rate application in September 2013. Long ago the
24 deadline for intervention was set as June 6, 2014. RUCO had more than eight months to
25 intervene, but it failed to do so. Certainly, RUCO does not rely on members of the
26 general public to inform its staff of important matters before the Commission. As a state
27 agency with a single primary purpose of protecting residents' interests in rate cases, it
28

1 monitors the Commission rate case filings on a continual basis. Clearly, RUCO knew or
2 should have known, about the Company's rate case in September 2013 or soon thereafter.
3
4 No reasonable argument can be made that would justify RUCO's decision to wait eight
5 months before filing its application to intervene.

6 **C. Intervention Will Cause Prejudicial Delay and Additional Cost.**
7

8 As noted above, the most important factor to consider is whether intervention will
9 cause prejudicial delay. Here, RUCO is not only arguing for intervention, but wants time
10 to prepare testimony, present witnesses, and take any action available to parties to the
11 case. Effectively, RUCO seeks to restart the case and postpone the hearing that is set to
12 begin very soon.
13

14 Granting intervention at this stage of the case would be greatly prejudicial to
15 Utility Source. This rate case has already been ongoing for more than eight months. The
16 Company has lost substantial amounts of money since 2010. Further delay will
17 exasperate the situation. Moreover, RUCO's intervention will undoubtedly cause the
18 cost of this rate case to double, which will be a direct additional cost to the Company.
19 The Company will seek to have these additional rate case expenses recovered in rates.
20 Thus, RUCO's late intervention will end with customers paying the additional cost.
21
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23 **III. CONCLUSION AND ACTION REQUESTED.**
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25 For the foregoing reasons, this Court should deny RUCO's application to
26 intervene and leave the procedural schedule as it is currently set.
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1 RESPECTFULLY SUBMITTED this 9th day of July, 2014.

2 **MOYES SELLERS & HENDRICKS LTD.**

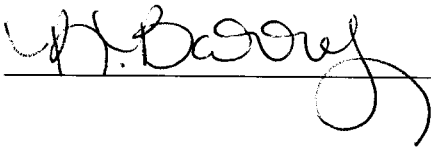
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8 Original and 13 copies of the foregoing
9 filed this 9th day of July 2014, with:

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